

Centers for Medicare & Medicaid Services, HHS

§ 483.75

(2) The facility must provide each resident with—

(i) A separate bed of proper size and height for the convenience of the resident;

(ii) A clean, comfortable mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(3) CMS, or in the case of a nursing facility the survey agency, may permit variations in requirements specified in paragraphs (d)(1) (i) and (ii) of this section relating to rooms in individual cases when the facility demonstrates in writing that the variations—

(i) Are in accordance with the special needs of the residents; and

(ii) Will not adversely affect residents' health and safety.

(e) *Toilet facilities.* Each resident room must be equipped with or located near toilet and bathing facilities.

(f) *Resident call system.* The nurse's station must be equipped to receive resident calls through a communication system from—

(1) Resident rooms; and

(2) Toilet and bathing facilities.

(g) *Dining and resident activities.* The facility must provide one or more rooms designated for resident dining and activities. These rooms must—

(1) Be well lighted;

(2) Be well ventilated, with non-smoking areas identified;

(3) Be adequately furnished; and

(4) Have sufficient space to accommodate all activities.

(h) *Other environmental conditions.* The facility must provide a safe, functional, sanitary, and comfortable environment for the residents, staff and the public. The facility must—

(1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;

(3) Equip corridors with firmly secured handrails on each side; and

(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

[56 FR 48876, Sept. 26, 1991, as amended at 57 FR 43925, Sept. 23, 1992]

§ 483.75 Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(a) *Licensure.* A facility must be licensed under applicable State and local law.

(b) *Compliance with Federal, State, and local laws and professional standards.* The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

(c) *Relationship to other HHS regulations.* In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR part 80); nondiscrimination on the basis of handicap (45 CFR part 84); nondiscrimination on the basis of age (45 CFR part 91); protection of human subjects of research (45 CFR part 46); and fraud and abuse (42 CFR part 455). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(d) *Governing body.* (1) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

(2) The governing body appoints the administrator who is—

(i) Licensed by the State where licensing is required; and

(ii) Responsible for management of the facility.

(e) *Required training of nursing aides—*
(1) *Definitions.*

Licensed health professional means a physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; physical or occupational therapy assistant; registered professional nurse; licensed practical nurse; or licensed or certified social worker.

Nurse aide means any individual providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay.

(2) *General rule.* A facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time basis, unless:

(i) That individual is competent to provide nursing and nursing related services; and

(ii)(A) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State as meeting the requirements of §§ 483.151–483.154 of this part; or

(B) That individual has been deemed or determined competent as provided in § 483.150 (a) and (b).

(3) *Non-permanent employees.* A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the requirements in paragraphs (e)(2) (i) and (ii) of this section.

(4) *Competency.* A facility must not use any individual who has worked less than 4 months as a nurse aide in that facility unless the individual—

(i) Is a full-time employee in a State-approved training and competency evaluation program;

(ii) Has demonstrated competence through satisfactory participation in a State-approved nurse aide training and competency evaluation program or competency evaluation program; or

(iii) Has been deemed or determined competent as provided in § 483.150 (a) and (b).

(5) *Registry verification.* Before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has

met competency evaluation requirements unless—

(i) The individual is a full-time employee in a training and competency evaluation program approved by the State; or

(ii) The individual can prove that he or she has recently successfully completed a training and competency evaluation program or competency evaluation program approved by the State and has not yet been included in the registry. Facilities must follow up to ensure that such an individual actually becomes registered.

(6) *Multi-State registry verification.* Before allowing an individual to serve as a nurse aide, a facility must seek information from every State registry established under sections 1819(e)(2)(A) or 1919(e)(2)(A) of the Act the facility believes will include information on the individual.

(7) *Required retraining.* If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(8) *Regular in-service education.* The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must—

(i) Be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year;

(ii) Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff; and

(iii) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

(f) *Proficiency of Nurse aides.* The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified

through resident assessments, and described in the plan of care.

(g) *Staff qualifications.* (1) The facility must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements.

(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.

(h) *Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement described in section 1861(w) of the Act or (with respect to services furnished to NF residents and dental services furnished to SNF residents) an agreement described in paragraph (h)(2) of this section.

(2) Arrangements as described in section 1861(w) of the Act or agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for—

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

(ii) The timeliness of the services.

(i) *Medical director.* (1) The facility must designate a physician to serve as medical director.

(2) The medical director is responsible for—

(i) Implementation of resident care policies; and

(ii) The coordination of medical care in the facility.

(j) *Level B requirement: Laboratory services.* (1) The facility must provide or obtain laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own laboratory services, the services must meet the applicable requirements for laboratories specified in part 493 of this chapter.

(ii) If the facility provides blood bank and transfusion services, it must meet the applicable requirements for laboratories specified in part 493 of this chapter.

(iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of services in accordance with the requirements of part 493 of this chapter.

(iv) If the facility does not provide laboratory services on site, it must have an agreement to obtain these services from a laboratory that meets the applicable requirements of part 493 of this chapter.

(2) The facility must—

(i) Provide or obtain laboratory services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's clinical record laboratory reports that are dated and contain the name and address of the testing laboratory.

(k) *Radiology and other diagnostic services.* (1) The facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own diagnostic services, the services must meet the applicable conditions of participation for hospitals contained in § 482.26 of this subchapter.

(ii) If the facility does not provide its own diagnostic services, it must have an agreement to obtain these services from a provider or supplier that is approved to provide these services under Medicare.

(2) The facility must—

(i) Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(1) *Clinical records.* (1) The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices that are—

- (i) Complete;
- (ii) Accurately documented;
- (iii) Readily accessible; and
- (iv) Systematically organized.

(2) Clinical records must be retained for—

- (i) The period of time required by State law; or
- (ii) Five years from the date of discharge when there is no requirement in State law; or
- (iii) For a minor, three years after a resident reaches legal age under State law.

(3) The facility must safeguard clinical record information against loss, destruction, or unauthorized use;

(4) The facility must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by—

- (i) Transfer to another health care institution;
 - (ii) Law;
 - (iii) Third party payment contract;
- or
- (iv) The resident.

(5) The clinical record must contain—

- (i) Sufficient information to identify the resident;
- (ii) A record of the resident's assessments;
- (iii) The plan of care and services provided;
- (iv) The results of any preadmission screening conducted by the State; and
- (v) Progress notes.

(m) *Disaster and emergency preparedness.* (1) The facility must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(2) The facility must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.

(n) *Transfer agreement.* (1) In accordance with section 1861(l) of the Act, the facility (other than a nursing facility which is located in a State on an In-

dian reservation) must have in effect a written transfer agreement with one or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures that—

- (i) Residents will be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician; and
- (ii) Medical and other information needed for care and treatment of residents, and, when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

(2) The facility is considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(o) *Quality assessment and assurance.* (1) A facility must maintain a quality assessment and assurance committee consisting of—

- (i) The director of nursing services;
- (ii) A physician designated by the facility; and
- (iii) At least 3 other members of the facility's staff.

(2) The quality assessment and assurance committee—

- (i) Meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and
- (ii) Develops and implements appropriate plans of action to correct identified quality deficiencies.

(3) A State or the Secretary may not require disclosure of the records of such committee except in so far as such disclosure is related to the compliance of such committee with the requirements of this section.

(4) Good faith attempts by the committee to identify and correct quality deficiencies will not be used as a basis for sanctions.

(p) *Disclosure of ownership.* (1) The facility must comply with the disclosure requirements of §§ 420.206 and 455.104 of this chapter.

(2) The facility must provide written notice to the State agency responsible for licensing the facility at the time of change, if a change occurs in—

(i) Persons with an ownership or control interest, as defined in §§ 420.201 and 455.101 of this chapter;

(ii) The officers, directors, agents, or managing employees;

(iii) The corporation, association, or other company responsible for the management of the facility; or

(iv) The facility's administrator or director of nursing.

(3) The notice specified in paragraph (p)(2) of this section must include the identity of each new individual or company.

[56 FR 48877, Sept. 26, 1991, as amended at 56 FR 48918, Sept. 26, 1991; 57 FR 7136, Feb. 28, 1992; 57 FR 43925, Sept. 23, 1992; 59 FR 56237, Nov. 10, 1994; 63 FR 26311, May 12, 1998]

Subpart C—Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals

SOURCE: 57 FR 56506, Nov. 30, 1992, unless otherwise noted.

§ 483.100 Basis.

The requirements of §§ 483.100 through 483.138 governing the State's responsibility for preadmission screening and annual resident review (PASARR) of individuals with mental illness and mental retardation are based on section 1919(e)(7) of the Act.

§ 483.102 Applicability and definitions.

(a) This subpart applies to the screening or reviewing of all individuals with mental illness or mental retardation who apply to or reside in Medicaid certified NFs regardless of the source of payment for the NF services, and regardless of the individual's or resident's known diagnoses.

(b) *Definitions.* As used in this subpart—

(1) An individual is considered to have a serious mental illness (MI) if the individual meets the following requirements on diagnosis, level of impairment and duration of illness:

(i) *Diagnosis.* The individual has a major mental disorder diagnosable

under the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987.

Incorporation of the 1987 edition of the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 that govern the use of incorporation by reference.¹

This mental disorder is—

(A) A schizophrenic, mood, paranoid, panic or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability; but

(B) Not a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined in paragraph (b)(1)(i)(A) of this section.

(ii) *Level of impairment.* The disorder results in functional limitations in major life activities within the past 3 to 6 months that would be appropriate for the individual's developmental stage. An individual typically has at least one of the following characteristics on a continuing or intermittent basis:

(A) *Interpersonal functioning.* The individual has serious difficulty interacting appropriately and communicating effectively with other persons, has a possible history of altercations, evictions, firing, fear of strangers, avoidance of interpersonal relationships and social isolation;

(B) *Concentration, persistence, and pace.* The individual has serious difficulty in sustaining focused attention for a long enough period to permit the completion of tasks commonly found in work settings or in work-like structured activities occurring in school or

¹The Diagnostic and Statistical Manual of Mental Disorders is available for inspection at the Centers for Medicare & Medicaid Services, room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland, or at the Office of the Federal Register, suite 700, 800 North Capitol St. NW., Washington, DC. Copies may be obtained from the American Psychiatric Association, Division of Publications and Marketing, 1400 K Street, NW., Washington, DC 20005.

§ 483.104

home settings, manifests difficulties in concentration, inability to complete simple tasks within an established time period, makes frequent errors, or requires assistance in the completion of these tasks; and

(C) *Adaptation to change.* The individual has serious difficulty in adapting to typical changes in circumstances associated with work, school, family, or social interaction, manifests agitation, exacerbated signs and symptoms associated with the illness, or withdrawal from the situation, or requires intervention by the mental health or judicial system.

(iii) *Recent treatment.* The treatment history indicates that the individual has experienced at least one of the following:

(A) Psychiatric treatment more intensive than outpatient care more than once in the past 2 years (e.g., partial hospitalization or inpatient hospitalization); or

(B) Within the last 2 years, due to the mental disorder, experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.

(2) An individual is considered to have dementia if he or she has a primary diagnosis of dementia, as described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined in paragraph (b)(1)(i)(A) of this section.

(3) An individual is considered to have mental retardation (MR) if he or she has—

(i) A level of retardation (mild, moderate, severe or profound) described in the American Association on Mental Retardation's Manual on Classification in Mental Retardation (1983). Incorporation by reference of the 1983 edition of the American Association on Mental Retardation's Manual on Classification in Mental Retardation was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1

42 CFR Ch. IV (10–1–01 Edition)

CFR part 51 that govern the use of incorporations by reference;² or

(ii) A related condition as defined by § 435.1009 of this chapter.

[57 FR 56506, Nov. 30, 1992; 58 FR 25784, Apr. 28, 1993]

§ 483.104 State plan requirement.

As a condition of approval of the State plan, the State must operate a preadmission screening and annual resident review program that meets the requirements of §§ 483.100 through 483.138.

§ 483.106 Basic rule.

(a) *Requirement.* The State PASARR program must require—(1) Preadmission screening of all individuals with mental illness or mental retardation who apply as new admissions to Medicaid NFs on or after January 1, 1989;

(2) Initial review, by April 1, 1990, of all current residents with mental retardation or mental illness who entered Medicaid NFs prior to January 1, 1989; and

(3) At least annual review, as of April 1, 1990, of all residents with mental illness or mental retardation, regardless of whether they were first screened under the preadmission screening or annual resident review requirements.

(b) *Admissions, readmissions and inter-facility transfers*—(1) *New admission.* An individual is a new admission if he or she is admitted to any NF for the first time or does not qualify as a readmission. With the exception of certain hospital discharges described in paragraph (b)(2) of this section, new admissions are subject to preadmission screening.

(2) *Exempted hospital discharge.* (i) An exempted hospital discharge means an individual—

²The American Association on Mental Retardation's Manual on Classification in Mental Retardation is available for inspection at the Centers for Medicare & Medicaid Services, Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland, or at the Office of the Federal Register Information Center, Suite 700, 800 North Capitol St. NW., Washington, DC. Copies may be obtained from the American Association on Mental Retardation, 1719 Kalorama Rd., NW., Washington, DC 20009.

(A) Who is admitted to any NF directly from a hospital after receiving acute inpatient care at the hospital;

(B) Who requires NF services for the condition for which he or she received care in the hospital; and

(C) Whose attending physician has certified before admission to the facility that the individual is likely to require less than 30 days nursing facility services.

(ii) If an individual who enters a NF as an exempted hospital discharge is later found to require more than 30 days of NF care, the State mental health or mental retardation authority must conduct an annual resident review within 40 calendar days of admission.

(3) *Readmissions.* An individual is a readmission if he or she was readmitted to a facility from a hospital to which he or she was transferred for the purpose of receiving care. Readmissions are subject to annual resident review rather than preadmission screening.

(4) *Interfacility transfers*—(i) An interfacility transfer occurs when an individual is transferred from one NF to another NF, with or without an intervening hospital stay. Interfacility transfers are subject to annual resident review rather than preadmission screening.

(ii) In cases of transfer of a resident with MI or MR from a NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent PASARR and resident assessment reports accompany the transferring resident.

(c) *Purpose.* The preadmission screening and annual resident review process must result in determinations based on a physical and mental evaluation of each individual with mental illness or mental retardation, that are described in §§ 483.112 and 483.114.

(d) *Responsibility for evaluations and determinations.* The PASARR determinations of whether an individual requires the level of services provided by a NF and whether specialized services are needed—

(1) For individuals with mental illness, must be made by the State mental health authority and be based on an independent physical and mental eval-

uation performed by a person or entity other than the State mental health authority; and

(2) For individuals with mental retardation, must be made by the State mental retardation or developmental disabilities authority.

(e) *Delegation of responsibility*—(1) The State mental health and mental retardation authorities may delegate by subcontract or otherwise the evaluation and determination functions for which they are responsible to another entity only if—

(i) The State mental health and mental retardation authorities retain ultimate control and responsibility for the performance of their statutory obligations;

(ii) The two determinations as to the need for NF services and for specialized services are made, based on a consistent analysis of the data; and

(iii) The entity to which the delegation is made is not a NF or an entity that has a direct or indirect affiliation or relationship with a NF.

(2) The State mental retardation authority has responsibility for both the evaluation and determination functions for individuals with MR whereas the State mental health authority has responsibility only for the determination function.

(3) The evaluation of individuals with MI cannot be delegated by the State mental health authority because it does not have responsibility for this function. The evaluation function must be performed by a person or entity other than the State mental health authority. In designating an independent person or entity to perform MI evaluations, the State must not use a NF or an entity that has a direct or indirect affiliation or relationship with a NF.

[57 FR 56506, Nov. 30, 1992; 58 FR 25784, Apr. 28, 1993]

§ 483.108 Relationship of PASARR to other Medicaid processes.

(a) PASARR determinations made by the State mental health or mental retardation authorities cannot be countermanded by the State Medicaid agency, either in the claims process or through other utilization control/review processes or by the State survey and certification agency. Only appeals

determinations made through the system specified in subpart E of this part may overturn a PASARR determination made by the State mental health or mental retardation authorities.

(b) In making their determinations, however, the State mental health and mental retardation authorities must not use criteria relating to the need for NF care or specialized services that are inconsistent with this regulation and any supplementary criteria adopted by the State Medicaid agency under its approved State plan.

(c) To the maximum extent practicable, in order to avoid duplicative testing and effort, the PASARR must be coordinated with the routine resident assessments required by § 483.20(b).

§ 483.110 Out-of-State arrangements.

(a) *Basic rule.* The State in which the individual is a State resident (or would be a State resident at the time he or she becomes eligible for Medicaid), as defined in § 435.403 of this chapter, must pay for the PASARR and make the required determinations, in accordance with § 431.52(b).

(b) *Agreements.* A State may include arrangements for PASARR in its provider agreements with out-of-State facilities or reciprocal interstate agreements.

[57 FR 56506, Nov. 30, 1992; 58 FR 25784, Apr. 28, 1993]

§ 483.112 Preadmission screening of applicants for admission to NFs.

(a) *Determination of need for NF services.* For each NF applicant with MI or MR, the State mental health or mental retardation authority (as appropriate) must determine, in accordance with § 483.130, whether, because of the resident's physical and mental condition, the individual requires the level of services provided by a NF.

(b) *Determination of need for specialized services.* If the individual with mental illness or mental retardation is determined to require a NF level of care, the State mental health or mental retardation authority (as appropriate) must also determine, in accordance with § 483.130, whether the individual requires specialized services for the mental illness or mental retardation, as defined in § 483.120.

(c) *Timeliness*—(1) Except as specified in paragraph (c)(4) of this section, a preadmission screening determination must be made in writing within an annual average of 7 to 9 working days of referral of the individual with MI or MR by whatever agent performs the Level I identification, under § 483.128(a) of this part, to the State mental health or mental retardation authority for screening. (See § 483.128(a) for discussion of Level I evaluation.)

(2) The State may convey determinations verbally to nursing facilities and the individual and confirm them in writing.

(3) The State may compute separate annual averages for the mentally ill and the mentally retarded/developmentally disabled populations.

(4) The Secretary may grant an exception to the timeliness standard in paragraph (c)(1) of this section when the State—

- (i) Exceeds the annual average; and
- (ii) Provides justification satisfactory to the Secretary that a longer time period was necessary.

§ 483.114 Annual review of NF residents.

(a) *Individuals with mental illness.* For each resident of a NF who has mental illness, the State mental health authority must determine in accordance with § 483.130 whether, because of the resident's physical and mental condition, the resident requires—

- (1) The level of services provided by—
 - (i) A NF;
 - (ii) An inpatient psychiatric hospital for individuals under age 21, as described in section 1905(h) of the Act; or
 - (iii) An institution for mental diseases providing medical assistance to individuals age 65 or older; and
- (2) Specialized services for mental illness, as defined in § 483.120.

(b) *Individuals with mental retardation.* For each resident of a NF who has mental retardation, the State mental retardation or developmental disability authority must determine in accordance with § 483.130 whether, because of his or her physical or mental condition, the resident requires—

- (1) The level of services provided by a NF or an intermediate care facility for the mentally retarded; and

(2) Specialized services for mental retardation as defined in § 483.120.

(c) *Frequency of review*—(1) A review and determination must be conducted for each resident of a Medicaid NF who has mental illness or mental retardation not less often than annually.

(2) “Annually” is defined as occurring within every fourth quarter after the previous preadmission screen or annual resident review.

(d) *April 1, 1990 deadline for initial reviews*. The first set of annual reviews on residents who entered the NF prior to January 1, 1989, must be completed by April 1, 1990.

§ 483.116 Residents and applicants determined to require NF level of services.

(a) *Individuals needing NF services*. If the State mental health or mental retardation authority determines that a resident or applicant for admission to a NF requires a NF level of services, the NF may admit or retain the individual.

(b) *Individuals needing NF services and specialized services*. If the State mental health or mental retardation authority determines that a resident or applicant for admission requires both a NF level of services and specialized services for the mental illness or mental retardation—

(1) The NF may admit or retain the individual; and

(2) The State must provide or arrange for the provision of the specialized services needed by the individual while he or she resides in the NF.

§ 483.118 Residents and applicants determined not to require NF level of services.

(a) *Applicants who do not require NF services*. If the State mental health or mental retardation authority determines that an applicant for admission to a NF does not require NF services, the applicant cannot be admitted. NF services are not a covered Medicaid service for that individual, and further screening is not required.

(b) *Residents who require neither NF services nor specialized services for MI or MR*. If the State mental health or mental retardation authority determines that a resident requires neither the level of services provided by a NF nor

specialized services for MI or MR, regardless of the length of stay in the facility, the State must—

(1) Arrange for the safe and orderly discharge of the resident from the facility in accordance with § 483.12(a); and

(2) Prepare and orient the resident for discharge.

(c) *Residents who do not require NF services but require specialized services for MI or MR*—(1) *Long term residents*. Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, for any resident who has continuously resided in a NF for at least 30 months before the date of the determination, and who requires only specialized services as defined in § 483.120, the State must, in consultation with the resident's family or legal representative and caregivers—

(i) Offer the resident the choice of remaining in the facility or of receiving services in an alternative appropriate setting;

(ii) Inform the resident of the institutional and noninstitutional alternatives covered under the State Medicaid plan for the resident;

(iii) Clarify the effect on eligibility for Medicaid services under the State plan if the resident chooses to leave the facility, including its effect on readmission to the facility; and

(iv) Regardless of the resident's choice, provide for, or arrange for the provision of specialized services for the mental illness or mental retardation.

(2) *Short term residents*. Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, for any resident who requires only specialized services, as defined in § 483.120, and who has not continuously resided in a NF for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and caregivers—

(i) Arrange for the safe and orderly discharge of the resident from the facility in accordance with § 483.12(a);

(ii) Prepare and orient the resident for discharge; and

(iii) Provide for, or arrange for the provision of, specialized services for

§ 483.120

the mental illness or mental retardation.

(3) For the purpose of establishing length of stay in a NF, the 30 months of continuous residence in a NF or longer—

(i) Is calculated back from the date of the first annual resident review determination which finds that the individual is not in need of NF level of services;

(ii) May include temporary absences for hospitalization or therapeutic leave; and

(iii) May consist of consecutive residencies in more than one NF.

§ 483.120 Specialized services.

(a) *Definition*—(1) For mental illness, specialized services means the services specified by the State which, combined with services provided by the NF, results in the continuous and aggressive implementation of an individualized plan of care that—

(i) Is developed and supervised by an interdisciplinary team, which includes a physician, qualified mental health professionals and, as appropriate, other professionals.

(ii) Prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of serious mental illness, which necessitates supervision by trained mental health personnel; and

(iii) Is directed toward diagnosing and reducing the resident's behavioral symptoms that necessitated institutionalization, improving his or her level of independent functioning, and achieving a functioning level that permits reduction in the intensity of mental health services to below the level of specialized services at the earliest possible time.

(2) For mental retardation, specialized services means the services specified by the State which, combined with services provided by the NF or other service providers, results in treatment which meets the requirements of § 483.440(a)(1).

(b) *Who must receive specialized services.* The State must provide or arrange for the provision of specialized services, in accordance with this subpart, to all NF residents with MI or MR whose needs are such that continuous

42 CFR Ch. IV (10–1–01 Edition)

supervision, treatment and training by qualified mental health or mental retardation personnel is necessary, as identified by the screening provided in § 483.130 or §§ 483.134 and 483.136.

(c) *Services of lesser intensity than specialized services.* The NF must provide mental health or mental retardation services which are of a lesser intensity than specialized services to all residents who need such services.

§ 483.122 FFP for NF services.

(a) *Basic rule.* Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, FFP is available in State expenditures for NF services provided to a Medicaid eligible individual subject to the requirements of this part only if the individual has been determined—

(1) To need NF care under § 483.116(a) or

(2) Not to need NF services but to need specialized services, meets the requirements of § 483.118(c)(1), and elects to stay in the NF.

(b) *FFP for late reviews.* When a preadmission screening has not been performed prior to admission or an annual review is not performed timely, in accordance with § 483.114(c), but either is performed at a later date, FFP is available only for services furnished after the screening or review has been performed, subject to the provisions of paragraph (a) of this section.

§ 483.124 FFP for specialized services.

FFP is not available for specialized services furnished to NF residents as NF services.

§ 483.126 Appropriate placement.

Placement of an individual with MI or MR in a NF may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and the individual's needs for treatment do not exceed the level of services which can be delivered in the NF to which the individual is admitted either through NF services alone or, where necessary, through NF services supplemented by specialized services provided by or arranged for by the State.

§ 483.128 PASARR evaluation criteria.

(a) *Level I: Identification of individuals with MI or MR.* The State's PASARR program must identify all individuals who are suspected of having MI or MR as defined in § 483.102. This identification function is termed Level I. Level II is the function of evaluating and determining whether NF services and specialized services are needed. The State's performance of the Level I identification function must provide at least, in the case of first time identifications, for the issuance of written notice to the individual or resident and his or her legal representative that the individual or resident is suspected of having MI or MR and is being referred to the State mental health or mental retardation authority for Level II screening.

(b) *Adaptation to culture, language, ethnic origin.* Evaluations performed under PASARR and PASARR notices must be adapted to the cultural background, language, ethnic origin and means of communication used by the individual being evaluated.

(c) *Participation by individual and family.* PASARR evaluations must involve—

- (1) The individual being evaluated;
- (2) The individual's legal representative, if one has been designated under State law; and
- (3) The individual's family if—
 - (i) Available; and
 - (ii) The individual or the legal representative agrees to family participation.

(d) *Interdisciplinary coordination.* When parts of a PASARR evaluation are performed by more than one evaluator, the State must ensure that there is interdisciplinary coordination among the evaluators.

(e) The State's PASARR program must use at least the evaluative criteria of § 483.130 (if one or both determinations can easily be made categorically as described in § 483.130) or of §§ 483.132 and 483.134 or § 483.136 (or, in the case of individuals with both MI and MR, §§ 483.132, 483.134 and 483.136 if a more extensive individualized evaluation is required).

(f) *Data.* In the case of individualized evaluations, information that is necessary for determining whether it is

appropriate for the individual with MI or MR to be placed in an NF or in another appropriate setting should be gathered throughout all applicable portions of the PASARR evaluation (§§ 483.132 and 483.134 and/or § 483.136). The two determinations relating to the need for NF level of care and specialized services are interrelated and must be based upon a comprehensive analysis of all data concerning the individual.

(g) *Preexisting data.* Evaluators may use relevant evaluative data, obtained prior to initiation of preadmission screening or annual resident review, if the data are considered valid and accurate and reflect the current functional status of the individual. However, in the case of individualized evaluations, to supplement and verify the currency and accuracy of existing data, the State's PASARR program may need to gather additional information necessary to assess proper placement and treatment.

(h) *Findings.* For both categorical and individualized determinations, findings of the evaluation must correspond to the person's current functional status as documented in medical and social history records.

(i) *Evaluation report: Individualized determinations.* For individualized PASARR determinations, findings must be issued in the form of a written evaluative report which—

(1) Identifies the name and professional title of person(s) who performed the evaluation(s) and the date on which each portion of the evaluation was administered;

(2) Provides a summary of the medical and social history, including the positive traits or developmental strengths and weaknesses or developmental needs of the evaluated individual;

(3) If NF services are recommended, identifies the specific services which are required to meet the evaluated individual's needs, including services required in paragraph (i)(5) of this section;

(4) If specialized services are not recommended, identifies any specific mental retardation or mental health services which are of a lesser intensity

§ 483.130

42 CFR Ch. IV (10–1–01 Edition)

than specialized services that are required to meet the evaluated individual's needs;

(5) If specialized services are recommended, identifies the specific mental retardation or mental health services required to meet the evaluated individual's needs; and

(6) Includes the bases for the report's conclusions.

(j) *Evaluation report: Categorical determinations.* For categorical PASARR determinations, findings must be issued in the form of an abbreviated written evaluative report which—

(1) Identifies the name and professional title of the person applying the categorical determination and the data on which the application was made;

(2) Explains the categorical determination(s) that has (have) been made and, if only one of the two required determinations can be made categorically, describes the nature of any further screening which is required;

(3) Identifies, to the extent possible, based on the available data, NF services, including any mental health or specialized psychiatric rehabilitative services, that may be needed; and

(4) Includes the bases for the report's conclusions.

(k) *Interpretation of findings to individual.* For both categorical and individualized determinations, findings of the evaluation must be interpreted and explained to the individual and, where applicable, to a legal representative designated under State law.

(l) *Evaluation report.* The evaluator must send a copy of the evaluation report to the—

(1) Individual or resident and his or her legal representative;

(2) Appropriate State authority in sufficient time for the State authorities to meet the times identified in § 483.112(c) for PASs and § 483.114(c) for ARRs;

(3) Admitting or retaining NF;

(4) Individual's attending physician; and

(5) The discharging hospital if the individual is seeking NF admission from a hospital.

(m) The evaluation may be terminated if the evaluator finds at any time during the evaluation that the individual being evaluated—

(1) Does not have MI or MR; or

(2) Has—

(i) A primary diagnosis of dementia (including Alzheimer's Disease or a related disorder); or

(ii) A non-primary diagnosis of dementia without a primary diagnosis that is a serious mental illness, and does not have a diagnosis of MR or a related condition.

[57 FR 56506, Nov. 30, 1992; 58 FR 25784, Apr. 28, 1993]

§ 483.130 PASARR determination criteria.

(a) *Basis for determinations.* Determinations made by the State mental health or mental retardation authority as to whether NF level of services and specialized services are needed must be based on an evaluation of data concerning the individual, as specified in paragraph (b) of this section.

(b) *Types of determinations.* Determinations may be—

(1) Advance group determinations, in accordance with this section, by category that take into account that certain diagnoses, levels of severity of illness, or need for a particular service clearly indicate that admission to or residence in a NF is normally needed, or that the provision of specialized services is not normally needed; or

(2) Individualized determinations based on more extensive individualized evaluations as required in § 483.132, § 483.134, or § 483.136 (or, in the case of an individual having both MR and MI, §§ 483.134 and 483.136).

(c) *Group determinations by category.* Advance group determinations by category developed by the State mental health or mental retardation authorities may be made applicable to individuals by the NF or other evaluator following Level I review only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator readily to determine that the individual fits into the category established by the State authorities (see § 483.132(c)). Sources of existing data on the individual that could form the basis for applying a categorical determination by the State authorities would be hospital records, physician's evaluations, election of hospice status, records of community

mental health centers or community mental retardation or developmental disability providers.

(d) *Examples of categories.* Examples of categories for which the State mental health or mental retardation authority may make an advance group determination that NF services are needed are—

(1) Convalescent care from an acute physical illness which—

(i) Required hospitalization; and

(ii) Does not meet all the criteria for an exempt hospital discharge, which is not subject to preadmission screening, as specified in § 483.106(b)(2).

(2) Terminal illness, as defined for hospice purposes in § 418.3 of this chapter;

(3) Severe physical illnesses such as coma, ventilator dependence, functioning at a brain stem level, or diagnoses such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure which result in a level of impairment so severe that the individual could not be expected to benefit from specialized services;

(4) Provisional admissions pending further assessment in cases of delirium where an accurate diagnosis cannot be made until the delirium clears;

(5) Provisional admissions pending further assessment in emergency situations requiring protective services, with placement in a nursing facility not to exceed 7 days; and

(6) Very brief and finite stays of up to a fixed number of days to provide respite to in-home caregivers to whom the individual with MI or MR is expected to return following the brief NF stay.

(e) *Time limits.* The State may specify time limits for categorical determinations that NF services are needed and in the case of paragraphs (d)(4), (5) and (6) of this section, must specify a time limit which is appropriate for provisional admissions pending further assessment and for emergency situations and respite care. If an individual is later determined to need a longer stay than the State's limit allows, the individual must be subjected to an annual resident review before continuation of the stay may be permitted and pay-

ment made for days of NF care beyond the State's time limit.

(f) The State mental health and mental retardation authorities may make categorical determinations that specialized services are not needed in the provisional, emergency and respite admission situations identified in § 483.130(d)(4)–(6). In all other cases, except for § 483.130(h), a determination that specialized services are not needed must be based on a more extensive individualized evaluation under § 483.134 or § 483.136.

(g) *Categorical determinations: No positive specialized treatment determinations.* The State mental health and mental retardation authorities must not make categorical determinations that specialized services are needed. Such a determination must be based on a more extensive individualized evaluation under § 483.134 or § 483.136 to determine the exact nature of the specialized services that are needed.

(h) *Categorical determinations: Dementia and MR.* The State mental retardation authority may make categorical determinations that individuals with dementia, which exists in combination with mental retardation or a related condition, do not need specialized services.

(i) If a State mental health or mental retardation authority determines NF needs by category, it may not waive the specialized services determination. The appropriate State authority must also determine whether specialized services are needed either by category (if permitted) or by individualized evaluations, as specified in § 483.134 or § 483.136.

(j) *Recording determinations.* All determinations made by the State mental health and mental retardation authority, regardless of how they are arrived at, must be recorded in the individual's record.

(k) *Notice of determination.* The State mental health or mental retardation authority must notify in writing the following entities of a determination made under this subpart:

(1) The evaluated individual and his or her legal representative;

(2) The admitting or retaining NF;

(3) The individual or resident's attending physician; and

(4) The discharging hospital, unless the individual is exempt from preadmission screening as provided for at § 483.106(b)(2).

(1) *Contents of notice.* Each notice of the determination made by the State mental health or mental retardation authority must include—

(1) Whether a NF level of services is needed;

(2) Whether specialized services are needed;

(3) The placement options that are available to the individual consistent with these determinations; and

(4) The rights of the individual to appeal the determination under subpart E of this part.

(m) *Placement options.* Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, the placement options and the required State actions are as follows:

(1) *Can be admitted to a NF.* Any applicant for admission to a NF who has MI or MR and who requires the level of services provided by a NF, regardless of whether specialized services are also needed, may be admitted to a NF, if the placement is appropriate, as determined in § 483.126. If specialized services are also needed, the State is responsible for providing or arranging for the provision of the specialized services.

(2) *Cannot be admitted to a NF.* Any applicant for admission to a NF who has MI or MR and who does not require the level of services provided by a NF, regardless of whether specialized services are also needed, is inappropriate for NF placement and must not be admitted.

(3) *Can be considered appropriate for continued placement in a NF.* Any NF resident with MI or MR who requires the level of services provided by a NF, regardless of the length of his or her stay or the need for specialized services, can continue to reside in the NF, if the placement is appropriate, as determined in § 483.126.

(4) *May choose to remain in the NF even though the placement would otherwise be inappropriate.* Any NF resident with MI or MR who does not require the level of services provided by a NF but does require specialized services

and who has continuously resided in a NF for at least 30 consecutive months before the date of determination may choose to continue to reside in the facility or to receive covered services in an alternative appropriate institutional or noninstitutional setting. Wherever the resident chooses to reside, the State must meet his or her specialized services needs. The determination notice must provide information concerning how, when, and by whom the various placement options available to the resident will be fully explained to the resident.

(5) *Cannot be considered appropriate for continued placement in a NF and must be discharged (short-term residents).* Any NF resident with MI or MR who does not require the level of services provided by a NF but does require specialized services and who has resided in a NF for less than 30 consecutive months must be discharged in accordance with § 483.12(a) to an appropriate setting where the State must provide specialized services. The determination notice must provide information on how, when, and by whom the resident will be advised of discharge arrangements and of his/her appeal rights under both PASARR and discharge provisions.

(6) *Cannot be considered appropriate for continued placement in a NF and must be discharged (short or long-term residents).* Any NF resident with MI or MR who does not require the level of services provided by a NF and does not require specialized services regardless of his or her length of stay, must be discharged in accordance with § 483.12(a). The determination notice must provide information on how, when, and by whom the resident will be advised of discharge arrangements and of his or her appeal rights under both PASARR and discharge provisions.

(n) *Specialized services needed in a NF.* If a determination is made to admit or allow to remain in a NF any individual who requires specialized services, the determination must be supported by assurances that the specialized services that are needed can and will be provided or arranged for by the State while the individual resides in the NF.

(o) *Record retention.* The State PASARR system must maintain

records of evaluations and determinations, regardless of whether they are performed categorically or individually, in order to support its determinations and actions and to protect the appeal rights of individuals subjected to PASARR; and

(p) *Tracking system.* The State PASARR system must establish and maintain a tracking system for all individuals with MI or MR in NFs to ensure that appeals and future reviews are performed in accordance with this subpart and subpart E.

[57 FR 56506, Nov. 30, 1992; 58 FR 25784, Apr. 28, 1993]

§ 483.132 Evaluating the need for NF services and NF level of care (PASARR/NF).

(a) *Basic rule.* For each applicant for admission to a NF and each NF resident who has MI or MR, the evaluator must assess whether—

(1) The individual's total needs are such that his or her needs can be met in an appropriate community setting;

(2) The individual's total needs are such that they can be met only on an inpatient basis, which may include the option of placement in a home and community-based services waiver program, but for which the inpatient care would be required;

(3) If inpatient care is appropriate and desired, the NF is an appropriate institutional setting for meeting those needs in accordance with § 483.126; or

(4) If the inpatient care is appropriate and desired but the NF is not the appropriate setting for meeting the individual's needs in accordance with § 483.126, another setting such as an ICF/MR (including small, community-based facilities), an IMD providing services to individuals aged 65 or older, or a psychiatric hospital is an appropriate institutional setting for meeting those needs.

(b) *Determining appropriate placement.* In determining appropriate placement, the evaluator must prioritize the physical and mental needs of the individual being evaluated, taking into account the severity of each condition.

(c) *Data.* At a minimum, the data relied on to make a determination must include:

(1) Evaluation of physical status (for example, diagnoses, date of onset, medical history, and prognosis);

(2) Evaluation of mental status (for example, diagnoses, date of onset, medical history, likelihood that the individual may be a danger to himself/herself or others); and

(3) Functional assessment (activities of daily living).

(d) Based on the data compiled in § 483.132 and, as appropriate, in §§ 483.134 and 483.136, the State mental health or mental retardation authority must determine whether an NF level of services is needed.

§ 483.134 Evaluating whether an individual with mental illness requires specialized services (PASARR/MI).

(a) *Purpose.* The purpose of this section is to identify the minimum data needs and process requirements for the State mental health authority, which is responsible for determining whether or not the applicant or resident with MI, as defined in § 483.102(b)(1) of this part, needs a specialized services program for mental illness as defined in § 483.120.

(b) *Data.* Minimum data collected must include—(1) A comprehensive history and physical examination of the person. The following areas must be included (if not previously addressed):

(i) Complete medical history;

(ii) Review of all body systems;

(iii) Specific evaluation of the person's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and

(iv) In case of abnormal findings which are the basis for an NF placement, additional evaluations conducted by appropriate specialists.

(2) A comprehensive drug history including current or immediate past use of medications that could mask symptoms or mimic mental illness.

(3) A psychosocial evaluation of the person, including current living arrangements and medical and support systems.

(4) A comprehensive psychiatric evaluation including a complete psychiatric history, evaluation of intellectual functioning, memory functioning, and orientation, description of current

attitudes and overt behaviors, affect, suicidal or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations.

(5) A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities while living in the community. The assessment must determine whether this level of support can be provided to the individual in an alternative community setting or whether the level of support needed is such that NF placement is required.

(6) The functional assessment must address the following areas: Self-monitoring of health status, self-administering and scheduling of medical treatment, including medication compliance, or both, self-monitoring of nutritional status, handling money, dressing appropriately, and grooming.

(c) *Personnel requirements.* (1) If the history and physical examination are not performed by a physician, then a physician must review and concur with the conclusions.

(2) The State may designate the mental health professionals who are qualified—

(i) To perform the evaluations required under paragraph (b) (2)–(6) of this section including the—

- (A) Comprehensive drug history;
- (B) Psychosocial evaluation;
- (C) Comprehensive psychiatric evaluation;
- (D) Functional assessment; and

(ii) To make the determination required in paragraph (d) of this section.

(d) *Data interpretation.* Based on the data compiled, a qualified mental health professional, as designated by the State, must validate the diagnosis of mental illness and determine whether a program of psychiatric specialized services is needed.

§ 483.136 Evaluating whether an individual with mental retardation requires specialized services (PASARR/MR).

(a) *Purpose.* The purpose of this section is to identify the minimum data needs and process requirements for the State mental retardation authority to determine whether or not the applicant

or resident with mental retardation, as defined in § 483.102(b)(3) of this part, needs a continuous specialized services program, which is analogous to active treatment, as defined in §§ 435.1009 and 483.440 of this chapter.

(b) *Data.* Minimum data collected must include the individual's comprehensive history and physical examination results to identify the following information or, in the absence of data, must include information that permits a reviewer specifically to assess:

(1) The individual's medical problems;

(2) The level of impact these problems have on the individual's independent functioning;

(3) All current medications used by the individual and the current response of the individual to any prescribed medications in the following drug groups:

- (i) Hypnotics,
- (ii) Antipsychotics (neuroleptics),
- (iii) Mood stabilizers and antidepressants,
- (iv) Antianxiety-sedative agents, and
- (v) Anti-Parkinson agents.

(4) Self-monitoring of health status;

(5) Self-administering and scheduling of medical treatments;

(6) Self-monitoring of nutritional status;

(7) Self-help development such as toileting, dressing, grooming, and eating;

(8) Sensorimotor development, such as ambulation, positioning, transfer skills, gross motor dexterity, visual motor perception, fine motor dexterity, eye-hand coordination, and extent to which prosthetic, orthotic, corrective or mechanical supportive devices can improve the individual's functional capacity;

(9) Speech and language (communication) development, such as expressive language (verbal and nonverbal), receptive language (verbal and nonverbal), extent to which non-oral communication systems can improve the individual's function capacity, auditory functioning, and extent to which amplification devices (for example, hearing aid) or a program of amplification can improve the individual's functional capacity;

(10) Social development, such as interpersonal skills, recreation-leisure skills, and relationships with others;

(11) Academic/educational development, including functional learning skills;

(12) Independent living development such as meal preparation, budgeting and personal finances, survival skills, mobility skills (orientation to the neighborhood, town, city), laundry, housekeeping, shopping, bedmaking, care of clothing, and orientation skills (for individuals with visual impairments);

(13) Vocational development, including present vocational skills;

(14) Affective development such as interests, and skills involved with expressing emotions, making judgments, and making independent decisions; and

(15) The presence of identifiable maladaptive or inappropriate behaviors of the individual based on systematic observation (including, but not limited to, the frequency and intensity of identified maladaptive or inappropriate behaviors).

(c) *Data interpretation*—(1) The State must ensure that a licensed psychologist identifies the intellectual functioning measurement of individuals with MR or a related condition.

(2) Based on the data compiled in paragraph (b) of this section, the State mental retardation authority, using appropriate personnel, as designated by the State, must validate that the individual has MR or is a person with a related condition and must determine whether specialized services for mental retardation are needed. In making this determination, the State mental retardation authority must make a qualitative judgment on the extent to which the person's status reflects, singly and collectively, the characteristics commonly associated with the need for specialized services, including—

(i) Inability to—

(A) Take care of the most personal care needs;

(B) Understand simple commands;

(C) Communicate basic needs and wants;

(D) Be employed at a productive wage level without systematic long term supervision or support;

(E) Learn new skills without aggressive and consistent training;

(F) Apply skills learned in a training situation to other environments or settings without aggressive and consistent training;

(G) Demonstrate behavior appropriate to the time, situation or place without direct supervision; and

(H) Make decisions requiring informed consent without extreme difficulty;

(ii) Demonstration of severe maladaptive behavior(s) that place the person or others in jeopardy to health and safety; and

(iii) Presence of other skill deficits or specialized training needs that necessitate the availability of trained MR personnel, 24 hours per day, to teach the person functional skills.

[57 FR 56506, Nov. 30, 1992; 58 FR 25784, Apr. 28, 1993]

§ 483.138 Maintenance of services and availability of FFP.

(a) *Maintenance of services.* If a NF mails a 30 day notice of its intent to transfer or discharge a resident, under § 483.12(a) of this chapter, the agency may not terminate or reduce services until—

(1) The expiration of the notice period; or

(2) A subpart E appeal, if one has been filed, has been resolved.

(b) *Availability of FFP.* FFP is available for expenditures for services provided to Medicaid recipients during—

(1) The 30 day notice period specified in § 483.12(a) of this chapter; or

(2) During the period an appeal is in progress.

Subpart D—Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation

SOURCE: 56 FR 48919, Sept. 26, 1991, unless otherwise noted.

§ 483.150 Statutory basis; Deemed meeting or waiver of requirements.

(a) *Statutory basis.* This subpart is based on sections 1819(b)(5) and 1919(b)(5) of the Act, which establish

standards for training nurse-aides and for evaluating their competency.

(b) *Deemed meeting of requirements.* A nurse aide is deemed to satisfy the requirement of completing a training and competency evaluation approved by the State if he or she successfully completed a training and competency evaluation program before July 1, 1989 if—

(1) The aide would have satisfied this requirement if—

(i) At least 60 hours were substituted for 75 hours in sections 1819(f)(2) and 1919(f)(2) of the Act, and

(ii) The individual has made up at least the difference in the number of hours in the program he or she completed and 75 hours in supervised practical nurse aide training or in regular in-service nurse aide education;

or

(2) The individual was found to be competent (whether or not by the State) after the completion of nurse aide training of at least 100 hours duration.

(c) *Waiver of requirements.* A State may—

(1) Waive the requirement for an individual to complete a competency evaluation program approved by the State for any individual who can demonstrate to the satisfaction of the State that he or she has served as a nurse aide at one or more facilities of the same employer in the state for at least 24 consecutive months before December 19, 1989; or

(2) Deem an individual to have completed a nurse aide training and competency evaluation program approved by the State if the individual completed, before July 1, 1989, such a program that the State determines would have met the requirements for approval at the time it was offered.

[56 FR 48919, Sept. 26, 1991; 56 FR 59331, Nov. 25, 1991, as amended at 60 FR 50443, Sept. 29, 1995]

§ 483.151 State review and approval of nurse aide training and competency evaluation programs and competency evaluation programs.

(a) *State review and administration.* (1) The State—

(i) Must specify any nurse aide training and competency evaluation programs that the State approves as meet-

ing the requirements of § 483.152 and/or competency evaluations programs that the State approves as meeting the requirements of § 483.154; and

(ii) May choose to offer a nurse aide training and competency evaluation program that meets the requirements of § 483.152 and/or a competency evaluation program that meets the requirements of § 483.154.

(2) If the State does not choose to offer a nurse aide training and competency evaluation program or competency evaluation program, the State must review and approve or disapprove nurse aide training and competency evaluation programs and nurse aide competency evaluation programs upon request.

(3) The State survey agency must in the course of all surveys, determine whether the nurse aide training and competency evaluation requirements of § 483.75(e) are met.

(b) *Requirements for approval of programs.* (1) Before the State approves a nurse aide training and competency evaluation program or competency evaluation program, the State must—

(i) Determine whether the nurse aide training and competency evaluation program meets the course requirements of §§ 483.152:

(ii) Determine whether the nurse aide competency evaluation program meets the requirements of § 483.154; and

(iii) In all reviews other than the initial review, visit the entity providing the program.

(2) The State may not approve a nurse aide training and competency evaluation program or competency evaluation program offered by or in a facility which, in the previous two years—

(i) In the case of a skilled nursing facility, has operated under a waiver under section 1819(b)(4)(C)(ii)(II) of the Act;

(ii) In the case of a nursing facility, has operated under a waiver under section 1919(b)(4)(C)(ii) of the Act that was granted on the basis of a demonstration that the facility is unable to provide nursing care required under section 1919(b)(4)(C)(i) of the Act for a period in excess of 48 hours per week;

(iii) Has been subject to an extended (or partial extended) survey under sections 1819(g)(2)(B)(i) or 1919(g)(2)(B)(i) of the Act;

(iv) Has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) of 1919(h)(2)(A)(ii) of the Act of not less than \$5,000; or

(v) Has been subject to a remedy described in sections 1819(h)(2)(B) (i) or (iii), 1819(h)(4), 1919(h)(1)(B)(i), or 1919(h)(2)(A) (i), (iii) or (iv) of the Act.

(3) A State may not, until two years since the assessment of the penalty (or penalties) has elapsed, approve a nurse aide training and competency evaluation program or competency evaluation program offered by or in a facility that, within the two-year period beginning October 1, 1988—

(i) Had its participation terminated under title XVIII of the Act or under the State plan under title XIX of the Act;

(ii) Was subject to a denial of payment under title XVIII or title XIX;

(iii) Was assessed a civil money penalty of not less than \$5,000 for deficiencies in nursing facility standards;

(iv) Operated under temporary management appointed to oversee the operation of the facility and to ensure the health and safety of its residents; or

(v) Pursuant to State action, was closed or had its residents transferred.

(c) *Time frame for acting on a request for approval.* The State must, within 90 days of the date of a request under paragraph (a)(3) of this section or receipt of additional information from the requester—

(1) Advise the requester whether or not the program has been approved; or

(2) Request additional information from the requesting entity.

(d) *Duration of approval.* The State may not grant approval of a nurse aide training and competency evaluation program for a period longer than 2 years. A program must notify the State and the State must review that program when there are substantive changes made to that program within the 2-year period.

(e) *Withdrawal of approval.* (1) The State must withdraw approval of a nurse aide training and competency evaluation program or nurse aide competency evaluation program offered by

or in a facility described in paragraph (b)(2) of this section.

(2) The State may withdraw approval of a nurse aide training and competency evaluation program or nurse aide competency evaluation program if the State determines that any of the applicable requirements of §§ 483.152 or 483.154 are not met by the program.

(3) The State must withdraw approval of a nurse aide training and competency evaluation program or a nurse aide competency evaluation program if the entity providing the program refuses to permit unannounced visits by the State.

(4) If a State withdraws approval of a nurse aide training and competency evaluation program or competency evaluation program—

(i) The State must notify the program in writing, indicating the reason(s) for withdrawal of approval of the program.

(ii) Students who have started a training and competency evaluation program from which approval has been withdrawn must be allowed to complete the course.

§ 483.152 Requirements for approval of a nurse aide training and competency evaluation program.

(a) For a nurse aide training and competency evaluation program to be approved by the State, it must, at a minimum—

(1) Consist of no less than 75 clock hours of training;

(2) Include at least the subjects specified in paragraph (b) of this section;

(3) Include at least 16 hours of supervised practical training. *Supervised practical training* means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse;

(4) Ensure that—

(i) Students do not perform any services for which they have not trained and been found proficient by the instructor; and

(ii) Students who are providing services to residents are under the general supervision of a licensed nurse or a registered nurse;

(5) Meet the following requirements for instructors who train nurse aides;

(i) The training of nurse aides must be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of long term care facility services;

(ii) Instructors must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides;

(iii) In a facility-based program, the training of nurse aides may be performed under the general supervision of the director of nursing for the facility who is prohibited from performing the actual training; and

(iv) Other personnel from the health professions may supplement the instructor, including, but not limited to, registered nurses, licensed practical/vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech/language/hearing therapists, and resident rights experts. Supplemental personnel must have at least 1 year of experience in their fields;

(6) Contain competency evaluation procedures specified in § 483.154.

(b) The curriculum of the nurse aide training program must include—

(1) At least a total of 16 hours of training in the following areas prior to any direct contact with a resident:

(i) Communication and interpersonal skills;

(ii) Infection control;

(iii) Safety/emergency procedures, including the Heimlich maneuver;

(iv) Promoting residents' independence; and

(v) Respecting residents' rights.

(2) Basic nursing skills;

(i) Taking and recording vital signs;

(ii) Measuring and recording height and weight;

(iii) Caring for the residents' environment;

(iv) Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and

(v) Caring for residents when death is imminent.

(3) Personal care skills, including, but not limited to—

(i) Bathing;

(ii) Grooming, including mouth care;

(iii) Dressing;

(iv) Toileting;

(v) Assisting with eating and hydration;

(vi) Proper feeding techniques;

(vii) Skin care; and

(viii) Transfers, positioning, and turning.

(4) Mental health and social service needs:

(i) Modifying aide's behavior in response to residents' behavior;

(ii) Awareness of developmental tasks associated with the aging process;

(iii) How to respond to resident behavior;

(iv) Allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(v) Using the resident's family as a source of emotional support.

(5) Care of cognitively impaired residents:

(i) Techniques for addressing the unique needs and behaviors of individual with dementia (Alzheimer's and others);

(ii) Communicating with cognitively impaired residents;

(iii) Understanding the behavior of cognitively impaired residents;

(iv) Appropriate responses to the behavior of cognitively impaired residents; and

(v) Methods of reducing the effects of cognitive impairments.

(6) Basic restorative services:

(i) Training the resident in self care according to the resident's abilities;

(ii) Use of assistive devices in transferring, ambulation, eating, and dressing;

(iii) Maintenance of range of motion;

(iv) Proper turning and positioning in bed and chair;

(v) Bowel and bladder training; and

(vi) Care and use of prosthetic and orthotic devices.

(7) Residents' Rights.

(i) Providing privacy and maintenance of confidentiality;

(ii) Promoting the residents' right to make personal choices to accommodate their needs;

(iii) Giving assistance in resolving grievances and disputes;

(iv) Providing needed assistance in getting to and participating in resident and family groups and other activities;

(v) Maintaining care and security of residents' personal possessions;

(vi) Promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff;

(vii) Avoiding the need for restraints in accordance with current professional standards.

(c) Prohibition of charges. (1) No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide training and competency evaluation program may be charged for any portion of the program (including any fees for textbooks or other required course materials).

(2) If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide training and competency evaluation program, the State must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

§ 483.154 Nurse aide competency evaluation.

(a) *Notification to Individual.* The State must advise in advance any individual who takes the competency evaluation that a record of the successful completion of the evaluation will be included in the State's nurse aid registry.

(b) *Content of the competency evaluation program—*(1) *Written or oral examinations.* The competency evaluation must—

(i) Allow an aide to choose between a written and an oral examination;

(ii) Address each course requirement specified in § 483.152(b);

(iii) Be developed from a pool of test questions, only a portion of which is used in any one examination;

(iv) Use a system that prevents disclosure of both the pool of questions and the individual competency evaluations; and

(v) If oral, must be read from a prepared text in a neutral manner.

(2) *Demonstration of skills.* The skills demonstration must consist of a demonstration of randomly selected items drawn from a pool consisting of the tasks generally performed by nurse aides. This pool of skills must include all of the personal care skills listed in § 483.152(b)(3).

(c) *Administration of the competency evaluation.* (1) The competency examination must be administered and evaluated only by—

(i) The State directly; or

(ii) A State approved entity which is neither a skilled nursing facility that participates in Medicare nor a nursing facility that participates in Medicaid.

(2) No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide competency evaluation program may be charged for any portion of the program.

(3) If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide competency evaluation program, the State must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

(4) The skills demonstration part of the evaluation must be—

(i) Performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide; and

(ii) Administered and evaluated by a registered nurse with at least one year's experience in providing care for the elderly or the chronically ill of any age.

(d) *Facility proctoring of the competency evaluation.* (1) The competency

evaluation may, at the nurse aide's option, be conducted at the facility in which the nurse aide is or will be employed unless the facility is described in § 483.151(b)(2).

(2) The State may permit the competency evaluation to be proctored by facility personnel if the State finds that the procedure adopted by the facility assures that the competency evaluation program—

- (i) Is secure from tampering;
- (ii) Is standardized and scored by a testing, educational, or other organization approved by the State; and
- (iii) Requires no scoring by facility personnel.

(3) The State must retract the right to proctor nurse aide competency evaluations from facilities in which the State finds any evidence of impropriety, including evidence of tampering by facility staff.

(e) *Successful completion of the competency evaluation program.* (1) The State must establish a standard for satisfactory completion of the competency evaluation. To complete the competency evaluation successfully an individual must pass both the written or oral examination and the skills demonstration.

(2) A record of successful completion of the competency evaluation must be included in the nurse aide registry provided in § 483.156 within 30 days of the date if the individual is found to be competent.

(f) *Unsuccessful completion of the competency evaluation program.* (1) If the individual does not complete the evaluation satisfactorily, the individual must be advised—

- (i) Of the areas which he or she; did not pass; and
- (ii) That he or she has at least three opportunities to take the evaluation.

(2) The State may impose a maximum upon the number of times an individual upon the number of times an individual may attempt to complete the competency evaluation successfully, but the maximum may be no less than three.

§ 483.156 Registry of nurse aides.

(a) *Establishment of registry.* The State must establish and maintain a registry

of nurse aides that meets the requirement of this section. The registry—

(1) Must include as a minimum the information contained in paragraph (c) of this section:

(2) Must be sufficiently accessible to meet the needs of the public and health care providers promptly;

(3) May include home health aides who have successfully completed a home health aide competency evaluation program approved by the State if home health aides are differentiated from nurse aides; and

(4) Must provide that any response to an inquiry that includes a finding of abuse, neglect, or misappropriation of property also include any statement disputing the finding made by the nurse aide, as provided under paragraph (c)(1)(ix) of this section.

(b) *Registry operation.* (1) The State may contract the daily operation and maintenance of the registry to a non-State entity. However, the State must maintain accountability for overall operation of the registry and compliance with these regulations.

(2) Only the State survey and certification agency may place on the registry findings of abuse, neglect, or misappropriation of property.

(3) The State must determine which individuals who (i) have successfully completed a nurse aide training and competency evaluation program or nurse aide competency evaluation program; (ii) have been deemed as meeting these requirements; or (iii) have had these requirements waived by the State do not qualify to remain on the registry because they have performed no nursing or nursing-related services for a period of 24 consecutive months.

(4) The State may not impose any charges related to registration on individuals listed in the registry.

(5) The State must provide information on the registry promptly.

(c) *Registry Content.* (1) The registry must contain at least the following information on each individual who has successfully completed a nurse aide training and competency evaluation program which meets the requirements of § 483.152 or a competency evaluation which meets the requirements of § 483.154 and has been found by the State to be competent to function as a

nurse aide or who may function as a nurse aide because of meeting criteria in § 483.150:

- (i) The individual's full name.
- (ii) Information necessary to identify each individual;
- (iii) The date the individual became eligible for placement in the registry through successfully completing a nurse aide training and competency evaluation program or competency evaluation program or by meeting the requirements of § 483.150; and
- (iv) The following information on any finding by the State survey agency of abuse, neglect, or misappropriation of property by the individual:

(A) Documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid;

(B) The date of the hearing, if the individual chose to have one, and its outcome; and

(C) A statement by the individual disputing the allegation, if he or she chooses to make one; and

(D) This information must be included in the registry within 10 working days of the finding and must remain in the registry permanently, unless the finding was made in error, the individual was found not guilty in a court of law, or the State is notified of the individual's death.

(2) The registry must remove entries for individuals who have performed no nursing or nursing-related services for a period of 24 consecutive months, unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of property.

(d) *Disclosure of information.* The State must—

(1) Disclose all of the information in § 483.156(c)(1) (iii) and (iv) to all requesters and may disclose additional information it deems necessary; and

(2) Promptly provide individuals with all information contained in the registry on them when adverse findings are placed on the registry and upon request. Individuals on the registry must have sufficient opportunity to correct

any misstatements or inaccuracies contained in the registry.

[56 FR 48919, Sept. 26, 1991; 56 FR 59331, Nov. 25, 1991]

§ 483.158 FFP for nurse aide training and competency evaluation.

(a) State expenditures for nurse aide training and competency evaluation programs and competency evaluation programs are administrative costs. They are matched as indicated in § 433.15(b)(8) of this chapter.

(b) FFP is available for State expenditures associated with nurse aide training and competency evaluation programs and competency evaluation programs only for—

(1) Nurse aides employed by a facility;

(2) Nurse aides who have an offer of employment from a facility;

(3) Nurse aides who become employed by a facility not later than 12 months after completing a nurse aide training and competency evaluation program or competency evaluation program; or

(4) Nurse aides who receive an offer of employment from a facility not later than 12 months after completing a nurse aide training and competency evaluation program or competency evaluation program.

Subpart E—Appeals of Discharges, Transfers, and Preadmission Screening and Annual Resident Review (PASARR) Determinations

SOURCE: 57 FR 56514, Nov. 30, 1992, unless otherwise noted.

§ 483.200 Statutory basis.

This subpart is based on sections 1819(e)(3) and (f)(3) and 1919(e)(3) and (f)(3) of the Act, which require States to make available, to individuals who are discharged or transferred from SNFs or NFs, an appeals process that complies with guidelines issued by the Secretary.

[60 FR 50443, Sept. 29, 1995]

§ 483.202 Definitions.

For purposes of this subpart and subparts B and C—